



OFFICE OF THE ATTORNEY GENERAL

ANTITRUST UNIT

MEMORANDUM

TO: Arizona state agencies, political subdivisions, school districts and municipalities

FROM: Nancy Bonnell, Antitrust Unit Chief

DATE: March 23, 2007

RE: *State of Arizona ex rel. Terry Goddard et al. v. Infineon Technologies AG et al.* (C-06-04333 PJH, N.D. Cal.): Document Preservation Directive

On July 14, 2006, the State of Arizona, through the Office of the Attorney General, filed an antitrust lawsuit on behalf of Arizona consumers, state agencies, political subdivisions, school districts and municipalities against several manufacturers of Dynamic Random Access Memory ("DRAM") for fixing DRAM prices. DRAM is a semiconductor product or chip, which provides high-speed storage and retrieval of electronic information for a wide variety of computer, telecommunication and consumer electronics products. DRAM is usually a component part in a piece of electronic equipment that the user purchases. Users can also purchase DRAM alone, for installation into a piece of equipment.

Our Office believes that as a result of the defendants' alleged price fixing activities, Arizona's public entities may have paid more for products containing DRAM than they would have had the defendants not allegedly engaged in the illegal activity. The lawsuit seeks to obtain damages on behalf of persons who purchased the price-fixed DRAM products, or who purchased electronic equipment that included DRAM components subject to the alleged price-fixing conspiracy.

The purpose of the memorandum is to direct the proper preservation, management and handling of documents that may be relevant to the lawsuit. The term “documents” is interpreted broadly to include paper, electronic, audio and video recordings, computer-based records (i.e., databases), e-records/digital records, and any other recorded forms of information that may be related to the DRAM litigation. Such “documents” include public and non-public records. It is imperative that any documents that relate to the lawsuit be identified, separated from other files and preserved and protected from destruction or alteration. Although the relevant time period for the lawsuit is 1998 to 2002, all documents that may relate to the lawsuit must be maintained in their original state, without destruction or alteration, until the Office of the Attorney General has notified you in writing that the DRAM litigation is fully resolved.

This directive relates to documents in your agency’s files (including all divisions, sections and units), both paper and electronic, as well as documents, both paper and electronic, in the possession, custody or control of persons for whom you have a responsibility and/or oversight. The directive also relates to responsive documents from the relevant time period that may currently be in ARCHIVES or OTHER STORAGE. These documents are to be treated as any other documents falling within the directive and thus destruction schedules for them should be suspended until the Office of the Attorney General notifies you otherwise. Further, by this Directive, we request that you immediately preserve electronically stored information that is likely to be relevant to this litigation by making electronic copies of the relevant e-mail messages and data files created or received since 1998 and retain them for our Office. Electronically stored information includes e-mail messages, web pages, word processing files, computer databases, or shared data.

All steps used to preserve the relevant electronically stored information and other relevant records should be well-documented and validated to ensure that the measures taken to comply with this preservation directive were adequate and relevant electronically stored information and other relevant records are preserved.

The following information about the alleged price-fixing conspiracy may be useful for helping you decide which purchasing and other records you need to preserve.

1. DRAM products are used in personal computers, laptops, workstations, servers, printers, hard disk drives, personal digital assistants, modems, mobile phones, telecommunications hubs and routers, digital cameras, video recorders, televisions, game consoles, and digital music players.
2. The semiconductor manufacturers who allegedly or admittedly participated in the price-fixing conspiracy include Micron Technology, Inc., Infineon Technologies AG, Hynix Semiconductor Inc., Samsung Electronics Company, Ltd., Nanya Technology Corporation, Mosel Vitelic, Inc., Elpida Memory Inc., NEC Electronics America, Inc., Winbond Electronics Corporation, and certain of their affiliates.
3. The semiconductor manufacturers allegedly fixed the prices at which DRAM products were sold to certain computer and server manufacturers (“OEMs”). These OEMs include Dell, Inc., Compaq Computer Corporation, Hewlett-Packard Company, Apple Computer Inc., International Business Machines Corporation, and Gateway, Inc.
4. To the extent the illegal overcharges were included in the purchase price, Arizona public entities may have suffered damages if they purchased DRAM products either directly from a semiconductor manufacturer, including those named above, or indirectly from a computer

or server manufacturer identified above, or other manufacturer of products containing DRAM as a component.

5. To prove a claim for damages, victims of the conspiracy may be called on to establish the quantity and nature of their purchases of the price-fixed product, or of equipment that included the price-fixed product as a component. Thus, purchase records and other documents that show the items purchased, the number of units, the prices paid, and the dates and terms of the transactions, may be needed.

6. The period during the alleged price-fixing conspiracy is from late 1998 through at least June 2002. Purchase records from at least this period are therefore likely to be germane. Should proof of injury be necessary, purchase records from the periods both before and after the alleged price-fixing may be helpful and must also be preserved. To the extent possible, purchase records from the beginning of 1996 through the present should be preserved.

If you have any questions please contact Nancy Bonnell, Antitrust Unit Chief, via e-mail (nancy.bonnell@azag.gov) or telephone (602-542-7728).